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I assent

H. KAMUZU BANDA

LIFE PRESIDENT

4th May, 1992

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An Act to consolidate the law relating to national parks and wildlife management; to establish the Wildlife Research and Management Board; and to provide for matters incidental to or connected therewith

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

1. This Act may be cited as the National Parks and Wildlife Act, 1992, and shall come into operation on a date to be appointed by the Minister by notice published in the *Gazette*. Short title
and
commence-
ment
2. In this Act, unless the context otherwise requires— Interpreta-
tion
 - “aircraft” includes all flying machines, whether or not powered by engines of any sort, whether captive, navigable, or free, and whether or not controlled by human agency, and all ground effect machines or hovercraft;
 - “animal” includes any member of the animal kingdom and includes man;
 - “Board” means the Wildlife Research and Management Board established under section 17;
 - “certificate of ownership” has the meaning ascribed to it under section 88;
 - “dangerous animal” includes hyaena, lion, leopard, hippo, elephant, rhinoceros, buffalo, or crocodile;
 - “dependent young” means any juvenile animal patently depending on an adult of the same species for sustenance or protection;
 - “domestic animal” means any animal which is sufficiently tame to serve some purpose for the use of man, whether or not such use is utilitarian, and includes individual animals which were once tamed or which are in the process of being so tamed;
 - “Fund” means the National Parks and Wildlife Fund established under section 100;
 - “game species” means a species of animals designated as a game species under section 44;
 - “Government trophy” has the meaning ascribed to it under section 90;
 - “hours of darkness” means the period between one half hour after sunset and one half hour before sunrise;
 - “hunt” means to attempt to take;
 - “officer” means the Chief Parks and Wildlife Officer and any other officer appointed pursuant to section 5;

“listed species” means plant or animal species listed under any international, regional or bilateral agreement to which Malawi or the Government is a party, and under regulations made pursuant to section 99;

“plant” means any member of the plant kingdom and includes the seeds of any plant species;

“professional hunter’s licence” means a licence issued pursuant to section 92;

“protected area” includes a national park, wildlife reserve and forest reserve;

“protected species” means any plant or animal declared as such pursuant to section 43;

“re-export” in relation to specimens, means to export a specimen previously imported into Malawi;

“specimen” means any wild plant or animal, alive or dead, whether or not native to Malawi, and any readily recognizable part or derivative of such plant or animal;

“sustainable yield level” means the highest rate of harvesting a specified wildlife population which can be maintained indefinitely without reducing the capacity of the population to continue providing the said rate of harvesting;

“take” in relation to an animal, means to wound, capture, or kill the animal, or remove or destroy its nest or egg or any part of it;

“wild animal” means any animal which is *verae naturae*, but does not include any domestic animal;

“wildlife” means any wild plant or animal of a species native to Malawi and includes animals which migrate through Malawi, and biotic communities composed of those species.

Purposes of
this Act

3.—(1) The purposes of this Act are—

(a) the conservation of selected examples of wildlife communities in Malawi;

(b) the protection of rare, endangered and endemic species of wild plants and animals;

(c) the conservation of wildlife throughout Malawi so that the abundance and diversity of their species are maintained at optimum levels commensurate with other forms of land use, in order to support sustainable utilization of wildlife for the benefit of the people of Malawi;

(d) the control of dangerous vertebrate species;

(e) the control of import, export and re-export of wildlife species and specimens; and

(f) the implementation of relevant international treaties, agreements or any other arrangement to which Malawi or the Government is a party.

(2) For the better achievement of the purposes of this Act, the Minister and every other person responsible for the administration of this Act shall ensure that any measures taken or instituted under this Act are based on the results of scientific investigation including the monitoring of species status and habitat condition.

(3) The provisions of this Act which relate to the management of species in wild habitats, shall refer only to species presently or formerly native to Malawi and shall not be construed as authorizing the introduction of exotic plants or animals into wild habitats within Malawi.

4.—(1) The ownership of every wild animal and wild plant existing in its wild habitat in Malawi is vested in the President on behalf of, and for the benefit of, the people of Malawi.

Ownership
of wild
animals or
plants

(2) Where any plant or animal other than a protected species is lawfully taken by any person, the ownership of such plant or animal shall, subject to the provisions of this Act, vest in that person.

(3) If any protected species is lawfully taken pursuant to a licence issued under this Act, the ownership of such animal or plant shall, subject to the provisions of this Act and to the terms and conditions of the licence, vest in the licensee.

(4) If prior to the commencement of this Act, any wild plant or animal is lawfully vested in any person such plant or animal shall, subject to the provisions of this Act, vest or continue to be vested in that person.

(5) Except with the authority under any licence, nothing in this section shall be deemed to transfer to any person the ownership of any protected animal found dead or dying, or a protected plant that has been cut down.

(6) If any person takes any protected animal or protected plant in contravention of this Act, the ownership of the animal or plant shall not be transferred to that person.

PART II—ADMINISTRATION

5. For the purpose of implementing this Act, there shall be appointed in the public service an officer to be designated as the Chief Parks and Wildlife Officer and other officers subordinate to him who shall be responsible for the administration of this Act subject to any general or special directions of the Minister.

Chief Parks
and Wildlife
Officer and
other officers

6.—(1) The Chief Parks and Wildlife Officer shall, subject to the general or special directions of the Minister, be responsible for the management of national parks and wildlife throughout Malawi and, in particular, for implementing the provisions of this Act, and shall exercise control over national parks and wildlife reserves in accordance with the provisions of this Act and any order declaring a national park or a wildlife reserve.

Duties of the
Chief Parks
and Wildlife
Officer

(2) Every officer shall exercise such functions and duties as may be conferred upon him by this Act or as may be delegated or assigned to him by the Chief Parks and Wildlife Officer.

Appointment
of an
Honorary
Parks and
Wildlife
Officer

7.—(1) The Minister may appoint any person to be an Honorary Parks and Wildlife Officer for such period not exceeding three years as the Minister shall specify in the instrument of appointment, and may, in like manner, renew or revoke any such appointment and shall cause notice of the appointment, renewal or revocation to be published in the *Gazette*.

(2) The appointment of any Honorary Parks and Wildlife Officer may be—

(a) general, in which case it shall authorize the officer to act in any part of Malaŵi; or

(b) limited, authorizing the officer to act only within a specified part or specified parts of Malaŵi.

(3) An Honorary Parks and Wildlife Officer may at any time be called by the Chief Parks and Wildlife Officer to serve on such official duties under this Act and for such length of time as may be agreed between the officer and the Chief Parks and Wildlife Officer.

(4) Every Honorary Parks and Wildlife Officer appointed under this section shall, while on official duty, be subject to the directions of the Chief Parks and Wildlife Officer or other officers appointed under this Act.

Officers to
prevent and
detect
offences

8. Any officer or any police officer may, without warrant, enter upon any land, building, tent, motor vehicle, trailer, aircraft, or boat for ensuring that the provisions of this Act are being complied with, or for the purpose of preventing or detecting any offence under this Act.

Seizure of
specimens
and articles

9.—(1) Any officer or any police officer may, without warrant, search any land, building, tent, motor vehicle, trailer, aircraft, boat or any baggage or package—

(a) if he has reasonable grounds for believing that any person has committed or is committing or is about to commit an offence under this Act; or

(b) to verify any document or matter purported to have been issued under this Act,

and if such officer finds any specimen or article which appears to have been obtained, possessed, used or about to be used in committing an offence under this Act, he shall seize such specimen or article.

(2) Any officer or police officer who seizes any specimen or article pursuant to subsection (1) shall give to the person from whom it was seized a receipt therefor in the prescribed form if any, signed by the officer or police officer.

10. Where the Chief Parks and Wildlife Officer is notified in writing by the Chief Public Prosecutor that no prosecution should be instituted for an offence committed in connexion with or in respect of any specimen or article seized under section 9, or where such prosecution has, if concluded, not resulted in the conviction of that person in respect thereof, any specimen or article seized shall be returned to its owner, within fourteen days of the receipt by the Chief Parks and Wildlife Officer of such written notice from the Chief Public Prosecutor:

Return of
seized
specimens
and articles

Provided that any such specimen or article shall not be so returned if the court has ordered it to be forfeited or destroyed under the provisions of this Act or any other written law.

11. Any officer may place or cause to be placed a barrier across any road for the purpose of examining or searching any motor vehicle or trailer or questioning any person:

Barriers to
be placed
across roads

Provided that such barrier shall conform to specifications laid down by the Chief Parks and Wildlife Officer who shall act in consultation with the other relevant authorities including, more particularly those responsible for roads and road traffic.

12.—(1) Where any person is found committing or is reasonably suspected of having committed or of being about to commit an offence under this Act, any officer may without warrant arrest such person.

Arrest of
persons for
committing
offences

(2) Any person arrested pursuant to subsection (1) shall, as soon as possible, through police officers be charged with the appropriate offence and be taken before a court, and shall not be detained longer than is necessary.

13.—(1) The Chief Public Prosecutor may, at the written request of the Chief Parks and Wildlife Officer, in writing nominate, by name or rank, any officer or class of officer of the Department of National Parks and Wildlife to undertake and prosecute criminal proceedings in respect of any offence alleged to have been committed by any person in contravention of this Act and may at any time, without assigning any reason thereof, in writing, cancel any such nomination.

Prosecution
by officers

(2) In undertaking or prosecuting any proceedings pursuant to subsection (1), such officer shall act in accordance with the general or special directions of the Chief Public Prosecutor and shall, for the purpose of any such proceedings, have the powers of a public prosecutor appointed under any written law for the time being in force.

14. Any document issued pursuant to this Act shall, upon request, be produced by the holder thereof for inspection by any officer or any police officer.

Production
of documents
for
inspection

Obstruction
of officers,
etc.

15. Any person who—

(a) obstructs any officer in the performance of his functions under this Act;

(b) refuses to furnish to any officer on request, particulars or information to which the officer is entitled by or under this Act;

(c) wilfully or recklessly gives to any officer false or misleading information which the officer is entitled to obtain under this Act,

shall be guilty of an offence.

Official

16. Any person who, without lawful authority—

(a) alters, defaces or removes any official record maintained in pursuance of this Act or any regulation or order made under this Act; or

(b) alters or defaces any prescribed document issued under this Act,

shall be guilty of an offence.

PART III—WILDLIFE RESEARCH AND MANAGEMENT BOARD

Establish-
ment of the
Board

17. There is hereby established a board to be known as the Wildlife Research and Management Board.

Composition
of the Board

18.—(1) The Board shall consist of—

(a) the following *ex officio* members—

(i) the Chief Parks and Wildlife Officer;

(ii) the officer-in-charge of the Department of National Parks and Wildlife Research Unit;

(iii) the head of Department of Antiquities;

(iv) the Chief Forestry Officer or his duly designated representative;

(v) the Chief Fisheries Officer or his duly designated representative;

(vi) the Chief Tourism Officer or his duly designated representative;

(b) two members appointed by the Minister, from University of Malawi, each of whom shall be a person with recognized qualifications, experience or specialization in matters relevant to conservation, preservation or protection of wildlife;

(c) one member representing the Wildlife Society of Malawi and nominated by the society's National Executive Committee and appointed by the Minister; and

(d) not less than three and not more than five members representing the general public appointed by the Minister.

(2) The minister shall designate one of the members to be Chairman of the Board.

(3) A member of the Board appointed under subsection (1) (b), (c) and (d) shall hold office for a period of two years unless his

appointment be sooner terminated and shall be eligible for re-appointment.

(4) The membership of the Board as first and subsequently appointed and every change in the membership to the Board shall be published in the *Gazette*.

(5) The office of the Chief Parks and Wildlife Officer shall provide the Secretariat of the Board.

(6) The office of a member appointed pursuant to subsection (1) (b), (c) and (d) shall become vacant—

(a) upon his death;

(b) if he is absent from three consecutive meetings of the Board without the approval of the Chairman or without other valid cause;

(c) upon the expiry of one month's notice in writing of his intention to resign his office, given by the member to the Chairman;

(d) if he is convicted of an offence under this Act; or

(e) if the Minister so directs.

19. The function of the Board shall be to advise the Minister on all matters relating to national parks and wildlife management in Malawi, including in particular but not limited to—

Functions of
the Board

(a) advising on the declaration of areas which, for the purpose of protecting wildlife species, biotic communities, sites of special interest or aesthetic values, the Board considers should be declared national parks or wildlife reserves under this Act; and

(b) advising on the import, export and re-export of wildlife specimens into and out of Malawi.

20.—(1) The Board shall meet not less than twice a year at such places and times as the Chairman may determine.

Meetings of
the Board

(2) The Board shall further meet at any time at the request, in writing, of any three of its members:

(3) The Board may at the discretion of the Chairman invite any person or persons to attend any meeting of the Board and such person or persons may take part in the proceedings of that meeting but shall not be entitled to vote.

(4) In the absence of the Chairman from any meeting of the Board the members present, if constituting a quorum, shall elect one of their number to preside at the meeting.

(5) A majority of the members of the Board shall constitute a quorum.

(6) At all meetings of the Board the decisions shall be reached by a simple majority, and the Chairman or other person presiding shall have a deliberative vote and, in the event of an equality of votes, shall have a casting vote.

(7) The Chairman of the Board shall report to the Board at each meeting thereof the action taken in respect of any matter on which the Board has advised the Minister.

(8) The Board shall determine its own procedure.

Members of
the Board
not deemed
public
officers

21. A member of the Board who is not a public officer shall not, by virtue only of his membership to the Board, be deemed to be an officer in the public service.

Allowances

22. A member of the Board, who is not an officer in the public service, shall be paid an honorarium determined by the Minister and shall be paid his reasonable travelling expenses and subsistence allowance while engaged upon the business of the Board at the rate prescribed by the Minister.

PART IV—WILDLIFE IMPACT ASSESSMENTS

Requests to
conduct
wildlife
impact
assessments

23.—(1) Any person who has a good and sufficient reason to believe that any proposed or existing government process or activity of the government or any other organization or person may have an adverse effect on any wildlife species or community such person may request, through the Board, the Minister that a wildlife impact assessment be conducted.

(2) Whenever the Minister receives such request under this section he may within thirty days of receipt thereof call upon the Board to conduct the assessment.

Submission
of the
assessment
reports to
the Minister

24.—(1) Where the Board is called upon pursuant to section 23 to conduct a wildlife impact assessment it shall arrange for the assessment to be conducted and shall submit a report of its findings to the Minister within ninety days of being called upon to conduct the assessment.

(2) In conducting the assessment, the Board may use any powers available to it under this Act as it may consider necessary, and may utilize the services of the Chief Parks and Wildlife Officer.

Contents of
the assess-
ment reports

25. Any report submitted by the Board to the Minister pursuant to section 24 (1) shall include—

(a) a statement of the existing or anticipated impacts upon wildlife, including an account of the species, communities, and habitats affected and the extent to which they are or may be threatened;

(b) a statement of whether rare, endangered or endemic species are or may be affected;

(c) a list of alternative actions, including inaction, which might be taken to remove or lessen adverse impacts; and

(d) its recommendations for subsequent government action.

PART V—NATIONAL PARKS AND WILDLIFE RESERVES

26.—(1) For the purposes of this Act, there shall be declared protected areas of public land to be known as national parks or wildlife reserves.

Declaration
of national
parks or
wildlife
reserves

(2) The declaration and management of national parks and wildlife reserves shall be subject to the provisions of sections 27 to 41.

27. The purposes of national parks and wildlife reserves shall be—

Purposes of
national
parks and
wildlife
reserves

(a) to preserve selected examples of biotic communities of Malawi and their physical environments;

(b) to protect areas of aesthetic beauty and of special interest;

(c) to preserve populations of rare, endemic and endangered species of wild plants and animals;

(d) to assist in water catchment conservation;

(e) without prejudice to the purposes listed in paragraphs (a) to (d), and within any limitations imposed by them, to provide facilities for studying the phenomena therein for the advancement of science and understanding; and

(f) without prejudice to the purposes listed in paragraphs (a) to (c), and within any limitations imposed by them, to provide facilities for public use and enjoyment of the resources therein.

28.—(1) The Minister may, by order published in the *Gazette*, declare any area of land or water within Malawi to be a national park or to be a wildlife reserve and may, in like manner, alter the boundaries of, or disestablish, any national park or wildlife reserve so declared, and the Minister shall first require the matter to be comprehensively studied by or under the auspices of the Board.

Procedure
for
declaration
of national
parks or
wildlife
reserves

(2) The Minister may amend such order, but any order the purpose of which is to alienate or excise land from a national park or wildlife reserve shall be of no effect unless and until approved by a resolution of the National Assembly.

(3) Any study made pursuant to the provision of subsection (1) shall investigate the ecological consequences of the proposed boundary change or disestablishment, and the report of the study shall be submitted to the Minister together with the advice of the Board within ninety days of the study being made.

(4) The Minister shall not decide upon any proposal relating to boundary change or disestablishment of any national park or wildlife reserve until he is in receipt of a report made pursuant to subsection (3).

Acquisition
of land for
national
parks or wild-
life reserves
Cap. 37:01,
Cap. 38:04

Temporary
management
measures

Description
of the area
to be
declared a
national
park or
wildlife
reserve

Prohibition
of entering
or residing in
national
parks or
wildlife
reserves
without
authority

29. Any area of land proposed for national park or wildlife reserve status and which is not public land shall first be acquired as public land in accordance with the provisions of the Land Act and Lands Acquisition Act.

30.—(1) When an area is proposed for declaration as a national park or wildlife reserve and action to do so in accordance with this Act has been started, the Minister may, on the recommendations of the Board, make administrative arrangements for managing the area by imposing temporary management measures effective for a period of not exceeding six months pending declaration of the area as a national park or wildlife reserve, and shall cause notice of the institution of such arrangements to be given in the *Gazette*.

(2) Any area to which temporary management measures apply shall be managed by the Chief Parks and Wildlife Officer in accordance with the administrative arrangements made under subsection (1).

(3) Any person who fails to comply with any directive or instruction of the Chief Parks and Wildlife Officer or of any officer duly acting on behalf of the Chief Parks and Wildlife Officer in the management of an area under this section shall be guilty of an offence; and for the avoidance of doubt, the offence hereby created is a strict liability offence.

31. Any order made under section 28 declaring a national park or a wildlife reserve shall incorporate a description of the area which shall include—

(a) the proposed name of the national park or wildlife reserve;

(b) an exact delimitation of the boundary which shall include a description of the land which may have been acquired pursuant to section 29.

32.—(1) Any person who, except in accordance with the provisions of this Act, enters into or resides in, or attempts to enter into or reside in, any national park or wildlife reserve shall be guilty of an offence.

(2) This section shall not apply to—

(a) the Minister, the Chief Parks and Wildlife Officer, any member of the Board, or any officer appointed for the purposes of this Act;

(b) any employee of the Department of National Parks and Wildlife or any police officer on official duties requiring his presence in a national park or wildlife reserve; or

(c) any person in possession of a permit to enter or reside in the national park or wildlife reserve issued under subsection (3).

(3) The Chief Parks and Wildlife Officer may issue to any person a permit, in the prescribed form, to enter or reside in any

national park or wildlife reserve, subject to payment by that person of the prescribed fee, if any.

33.—(1) Except as otherwise provided by section 39 or by section 40, any person who conveys into, or possesses or uses within, any national park or wildlife reserve any weapon, trap, explosive or poison shall be guilty of an offence.

Prohibition of possession or use of weapons, traps, explosives or poisons

(2) This section shall not apply to any officer acting in the performance of his duties.

34. Any person who discards or deposits any litter or any waste material in a national park or a wildlife reserve otherwise than into a receptacle provided for the purpose shall be guilty of an offence.

Prohibition of deposition of litter or waste

35. Except as otherwise provided by section 39 or by section 40, any person who, in a national park or a wildlife reserve—

Other prohibited acts in a national park or wildlife reserve

(a) hunts, takes, kills, injures, or disturbs any wild plant or animal, or any domestic animal or cultivated plant occurring lawfully therein;

(b) takes, destroys, damages, or defaces any object of geomorphological, archaeological, historical, cultural, or scientific interest, or any structure lawfully placed or constructed therein;

(c) prepares land for cultivation, prospects for minerals or mines or attempts any of these operations;

(d) drives, conveys, or introduces any wild animal into a national park or wildlife reserve;

(e) drives, conveys or introduces any domestic animal into a national park or wildlife reserve or who permits any domestic animal, of which he is for the time being in charge, to stray into a national park or wildlife reserve,

shall be guilty of an offence.

36. Any officer who finds a domestic animal within a national park or wildlife reserve and is satisfied that its presence there is unlawful may destroy the animal forthwith, and the owner of such animal shall not be entitled to compensation.

Destruction of domestic animals by officers

37.—(1) Except as otherwise provided by section 39, any person who conveys or introduces any plant, whether of a wild or cultivated species, into a national park or wildlife reserve shall be guilty of an offence.

Prohibition of introduction of plants into national parks or wildlife reserves

(2) The Chief Parks and Wildlife Officer may order the destruction or removal of any plant; and any seedling or off-shoot thereof, brought into a national park or wildlife reserve in contravention of subsection (1).

38. Except as otherwise provided by section 39, or by section 41 (2) (b), any person who starts or maintains any fire in a national park or wildlife reserve shall be guilty of an offence.

Prohibition against fire in the national park or wildlife reserve

Control of
harvest in
national
parks or
wildlife
reserves

39. Where it is intended to harvest resource within a national park or wildlife reserve—

(a) the Chief Parks and Wildlife Officer may, subject to the provisions of this Act, issue authority to any person, in the prescribed form, absolving him from compliance with the provisions of sections 33 (1) and 35 (a) to the extent specified in the authority; and

(b) the Chief Parks and Wildlife Officer shall be responsible for regulating and controlling harvesting in the national park or wildlife reserve; and in exercising his responsibility under this paragraph the Chief Parks and Wildlife Officer shall ensure that the annual harvest does not exceed sustainable yield level unless it is judged desirable by the Minister to exceed temporarily such level for the purposes of management.

Board to be
apprised of
the data

40.—(1) If the Chief Parks and Wildlife Officer is satisfied that an otherwise unlawful act specified by sections 34 to 37 should be carried out in any national park or wildlife reserve in the interests of better wildlife management, he shall apprise the Board of all data relevant on the subject and shall request the opinion of the Board.

(2) If the Board, having considered any matter submitted by the Chief Parks and Wildlife Officer pursuant to subsection (1), is of the opinion that an otherwise unlawful act should be carried out in the interests of better wildlife management, it shall, with the approval of the Minister, issue written instructions to any officer authorizing him to undertake the act.

Regulations
for use of
national
parks or
wildlife
reserves

41.—(1) The Minister shall, by notice published in the *Gazette*, make provision to the extent necessary for implementing management measures of national parks and wildlife reserves.

(2) The Minister may, on the recommendation of the Board, make regulations which shall provide for—

(a) conditions under which any person, vehicle, boat or aircraft may enter, travel through, reside in, or be kept in a national park or wildlife reserve;

(b) the prohibition or regulation of lighting camp or picnic fires in a national park or wildlife reserve;

(c) fees for entry into national parks or wildlife reserves or for services or amenities provided therein;

(d) prohibition or control of low flying aircraft over a national park or wildlife reserve;

(e) rules for persons within a national park or wildlife reserve;

(f) prohibition or control of commercial enterprises within a national park or wildlife reserve; and

(g) the efficient management of a national park or wildlife reserve.

(3) Any person who contravenes the provisions of any regulations made under subsection (2) shall be guilty of an offence.

PART VI—PROTECTED SPECIES

42. The purpose of this Part is to provide the classification of species of wild plants and animals as protected species in order that those particular species of plants or animals are accorded appropriate management priority.

Purpose of this Part

43.—(1) The Minister may, from time to time, on the recommendations of the Board and by order published in the *Gazette*, declare any species of wild plant or wild animal specified in such order to be classified as a protected species under this Act.

Declaration of protected species

(2) Any order made under subsection (1) may apply to an individual species throughout Malawi, or to all or some species in a specified area, or to varieties of a species including sex and age groups.

44.—(1) For the purposes of this Act, protected species of animals shall be classified as game species.

Game species

(2) The Chief Parks and Wildlife Officer shall, after consultation with the Board, and not later than the tenth day of November each year, cause to be published in the *Gazette* a list of all species that are to be classified as game species under this Act during the following year, and such list shall take effect from the first day of January of the following year.

(3) The Chief Parks and Wildlife Officer, after consultation with the Board may, at any time, by notice published in the *Gazette* vary the list, in effect at that time, of game species.

45. Wild plants and animals other than protected species shall not be subject to the restrictions on hunting or taking under Part VII, but shall be subject to all other provisions of this Act and to the provisions of any other written law.

Animals or plants which are not protected species

PART VII—LICENCES TO TAKE OR HUNT WILDLIFE

46. The purpose of this Part is to regulate the hunting and taking of wildlife resources.

Purposes of Part VII

47.—(1) Except as otherwise provided by this Act, any person who hunts or takes any protected species, except in accordance with the conditions of a licence issued pursuant to this Part shall be guilty of an offence:

General prohibition against hunting or taking without a licence

Provided that any officer shall not be required to possess a licence while acting in the performance of his duties or in exercising his powers under this Act.

(2) In any proceedings for an offence against subsection (1) the onus of proving that the hunting or the taking was in accordance with a valid licence shall rest upon the accused.

Classes of
licences

43.—(1) For the purposes of this Act there shall be the following classes of licences—

- (a) a bird licence;
- (b) a game licence;
- (c) hunting licence;
- (d) a special licence; and
- (e) a visitor's licence.

(2) The Minister may, on the recommendations of the Board and not later than the tenth day of December each year, by notice published in the *Gazette*, prescribe in respect of the forthcoming year—

- (a) the conditions attached to each class of licences;
- (b) the numbers of each class of licences which may be issued during the course of a year for specified areas;
- (c) the methods by which each class of licences may be issued or offered for sale;
- (d) the species, sorts or varieties, and the numbers or quantities of each class which may be hunted or taken under each class of licences;
- (e) the methods of hunting or taking which may or may not be used;
- (f) the areas and times of the year in or during which hunting or taking is lawful; and
- (g) the fees payable in respect of each class of licences.

(3) Licences under this Act shall be issued by the Chief Parks and Wildlife Officer, other officers subordinate to him as he may authorize in that behalf and such other persons as the Minister may by notice in the *Gazette* designate as persons also authorized to issue licences under this Act.

(4) Every licence under this Act shall be in the prescribed form and shall be issued upon application made in the prescribed form.

(5) No licence under this Act shall be issued to a person who has not attained the age of eighteen years.

Licence not
transferable

49. Except as otherwise provided by the Act, any licence issued under this Part shall not be transferable to any other person.

Bird licence

50.—(1) A bird licence shall authorize the licensee to hunt species of birds specified in the licence subject to and in accordance with the conditions prescribed generally for such class of licences or specially endorsed on his licence.

(2) Subject to section 52, a bird licence shall only be issued to citizens or residents of Malawi.

Game licence

51.—(1) Subject to the provisions of this Act and the conditions prescribed for such licence, a game licence shall authorize the licensee to hunt species specified in the licence subject to and in

accordance with the conditions prescribed generally for such class of licences or specially endorsed on his licence.

(2) Subject to section 52, a game licence shall only be issued to citizens or residents of Malawi.

52. Notwithstanding sections 50 and 51, a visitor's licence shall only be issued to a visitor to Malawi on such conditions as the Minister may prescribe, and shall authorize the licensee to hunt birds or game. Visitors licence

53. A special licence shall be issued in respect of protected species and shall authorize the licensee to hunt or to take protected species specified therein subject to and in accordance with the conditions prescribed generally for such classes of licence specially endorsed on his licence and in every case shall be issued for the purpose of— Special licence

(a) scientific research or the furtherance of scientific research relative to the species;

(b) scientific or educational or other proper use of the species in zoological institutions, botanical gardens, educational institutions, museums, herbaria and like institutions.

54. A hunting licence shall authorize the licensee to hunt protected species in a specified national park or wildlife reserve and shall be issued only in connexion with a professional hunter's licence and subject to and in accordance with the conditions prescribed generally for such class of licence or specially endorsed on his licence. Hunting licence

55.—(1) The Chief Parks and Wildlife Officer may refuse to issue a licence if— Grounds on which a licence may be refused

(a) the applicant fails to comply with any prescribed condition;

(b) any licence formerly held by the applicant under this Act has been revoked by the Chief Parks and Wildlife Officer within the previous twelve months;

(c) the applicant has been convicted of an offence under this Act during the previous twenty-four months;

(d) the Chief Parks and Wildlife Officer is satisfied on reasonable grounds that the applicant is not a fit or proper person to hold such licence; or

(e) the Chief Parks and Wildlife Officer is satisfied that the interests of wildlife management will be better served by a temporary freeze in issuing of licences of that class.

(2) The Chief Parks and Wildlife Officer shall, if requested by the applicant, notify the applicant in writing of any refusal under this section, and shall state his reasons therein.

Appeal to
the Minister
against
refusal of
issuance of
licence

56.—(1) An applicant who has been refused a licence under section 55 may appeal to the Minister in writing within thirty days after the date of a notice given pursuant to section 57 (2) but the Minister may, on proper cause shown, allow an appeal out of the time prescribed.

(2) The Minister shall be free to hear the views of the Chief Parks and Wildlife Officer in determining an appeal under this section and may uphold, vary or quash the decision of the Chief Parks and Wildlife Officer.

(3) The decision of the Minister on determination of an appeal shall be final.

Cancellation
of a licence

57.—(1) The Chief Parks and Wildlife Officer may revoke any licence issued to any person under this Part if he is reasonably satisfied of the existence of any ground that would entitle him under section 55 to refuse to issue a licence to that person.

(2) The Chief Parks and Wildlife Officer shall notify the licensee in writing of any cancellation under this section and shall state his reasons in writing.

Appeal to the
Minister
upon
cancellation
of a licence

58.—(1) Any licensee whose licence is cancelled under section 57, may appeal to the Minister in writing within thirty days after the date of a notice given pursuant to section 59 (2) but the Minister may on proper cause shown, allow an appeal out of the time prescribed.

(2) The Minister shall be free to hear the views of the Chief Parks and Wildlife Officer in determining an appeal under this section and may uphold, vary or quash the decision of the Chief Parks and Wildlife Officer.

(3) The decision of the Minister on determination of an appeal shall be final.

Cancellation
or suspension
of a licence.

59.—(1) The Minister may, on the advice of the Board or the Chief Parks and Wildlife Officer, suspend or cancel any licence issued under this Part, either in its entirety or in respect of specified areas, periods, species, or sorts or varieties of species, if the interests of wildlife management so require.

(2) Upon suspension or cancellation of any licence under subsection (1), the Chief Parks and Wildlife Officer shall notify the licensee thereunder either—

(a) in the case of an individual licensee, by written notice to him; or

(b) in the case of a general suspension or cancellation, by publishing, notices in the *Gazette* and in two consecutive issues of the daily local newspaper.

(3) A notice issued under subsection (2) in respect of cancellation may request surrender of licences to the Chief Parks and Wildlife Officer.

(4) A licensee under any licence suspended or cancelled under subsection (1) may appeal to the Minister in writing within thirty days after the date of a notice given under subsection (2) (a), or thirty days after publication of a notice in the *Gazette* made under subsection (2) (b).

(5) In determining such appeal, the Minister shall be free to hear the views of the Board or the Chief Parks and Wildlife Officer.

(6) The decision of the Minister on determination of an appeal shall be final.

60.—(1) Every licensee under this Part shall—

(a) have the licence in his possession whenever he is hunting or taking any animal or plant;

(b) produce the licence for inspection by an officer or police officer upon request; and

(c) keep a true record, in the prescribed form, of all game species hunted or taken by him during validity of the licence.

(2) Any person who contravenes this section shall be guilty of an offence.

Inspection
of a licence
and the
keeping of
records

61. In the case of animals—

(a) in computing the numbers or quantities of protected species hunted or taken under a licence issued pursuant to this Part, only animals that are killed, wounded, captured or taken shall be counted;

(b) if any protected species is killed or wounded through accident or error by any licensee under this Part whose licence entitles him to hunt such animal shall be counted as having been hunted under such licence.

Method of
computing
numbers or
quantities of
animal
hunted or
taken

62.—(1) Any licensee under this Part may employ or use another person to assist him as a guide, tracker or porter in hunting protected species.

Guides,
trackers and
porters

(2) Any person employed under subsection (1), not being himself a licensee, who chases, drives or employs any weapon against any protected species shall be guilty of an offence.

(3) Nothing in this section shall be construed as preventing the holder of a professional hunter's licence issued under section 92 from assisting his employer.

PART VIII—METHODS OF HUNTING AND TAKING, AND RESPONSIBILITIES OF HUNTERS

63. The purpose of this Part is to regulate methods of hunting and taking of animals and with a view to ensuring that wildlife resources are better managed and the opportunity to hunt made available to as many eligible persons as possible.

Purposes of
this Part

Prohibition
of use of
fires for
hunting

64.—(1) Subject to subsection (2), any person who, for the purpose of hunting, taking or assisting another to hunt or take, any wild animal or plant, causes any fire shall be guilty of an offence.

(2) The provisions of subsection (1) shall not apply to an owner of private land and to any person acting on the authority of an owner of private land causing fire upon his own land:

Provided that nothing in this subsection shall be construed as (a) entitling the owner of the private land held under lease; or (b) absolving the owner of the private land or any person acting on his authority from any offence or other forms of liability under this Act or any other Act or law arising from the spread of fire or the movement of any animal to adjoining land or lands.

Prohibition
of hunting
of dependent
young

65. Except as may be authorized under a special licence issued pursuant to section 53, or as permitted under the provisions of Part IX, any person who hunts any dependent young or any female accompanied by dependent young of any protected species shall be guilty of an offence.

Prohibited
acts against
killing
protected
species, etc.

66.—(1) Except as may be authorized by the conditions contained in any licence issued under this Act, any person who—

(a) for the purpose of or in connexion with hunting or taking of protected species, possesses, prepares, makes, buys, sells or uses any poison, birdlime, trap, net, snare or similar substance or device capable of killing, capturing or wounding, any protected species;

(b) makes, prepares or uses any excavation, fence, enclosure or any device fixed to the ground or upon plants, capable of killing, capturing or wounding, any protected species, shall be guilty of an offence.

(2) The onus of proving that an act under this section was done lawfully shall lie on the accused person.

Regulations
for weapons
to be used
in hunting

67.—(1) The Minister may from time to time, on the recommendations of the Board or the Chief Parks and Wildlife Officer, make regulations specifying the types, sizes, and calibres of weapons which may lawfully be used for hunting any protected species.

(2) A person who contravenes the provision of any regulation made under this section shall be guilty of an offence.

Prohibition
of hunting
during hours
of darkness

68. Except as may be authorized by the conditions contained in any licence issued under Part VII, any person who, during the hours of darkness, hunts or assists in the hunting of any protected species shall be guilty of an offence.

Hunting by
traditional
methods

69. Subject to regulations made by the Minister under this Act or any other written law, nothing in this Act shall be construed to prohibit the hunting of animals by traditional methods in places other than protected areas.

70.—(1) Except as provided by subsection (2) or as may be authorized by the conditions contained in any licence under this Act, any person who—

Use of motor vehicle, aircraft or radio communication prohibited

(a) discharges any weapon at any protected species from or within fifty metres of any motor vehicle, aircraft, or boat;

(b) uses any motor vehicle, aircraft or boat to drive or stam-pede any protected species; or

(c) uses any aircraft or radio communication system to locate any protected species for the purpose of hunting it,

shall be guilty of an offence.

(2) Nothing in subsection (1) shall prohibit the use of a motor vehicle, aircraft or boat for the purpose of driving off any wild animal from the land or water upon which an aircraft is about to land or take off.

71.—(1) The Minister may from time to time, on the recom-mendations of the Board, make regulations—

Regulations for use of domestic animals in hunting

(a) prohibiting the use of any domestic animal as an aid to hunting any protected species; or

(b) specifying the conditions under which any domestic animal may be used to hunt any protected species.

(2) Any person who contravenes the provisions of any regulation made under this section shall be guilty of an offence.

72.—(1) The Minister may from time to time, on the recom-mendations of the Board, make regulations—

Regulations for use of substances or devices in hunting

(a) prohibiting or controlling the use of baits, decoys, calling devices, hides, blinds, stands, or any other substances or devices to bring protected species into closer range of hunters;

(b) specifying the conditions under which any substance or device may be used to hunt any protected species;

(c) prohibiting or controlling hunting in the vicinity of salt licks, water holes or isolated watering places used by wild animal; or

(d) specifying procedures which any hunter may be required to follow after killing any protected species.

(2) Any person who contravenes the provisions of any regula-tion made under this section shall be guilty of an offence.

PART IX—HUNTING DANGEROUS ANIMALS, KILLING IN ERROR, WOUNDING AND MOLESTING ANIMALS

73. The purposes of this Part are—

Purposes of this Part

(a) to authorize the killing without licence of protected animals under circumstances where human life or property is threatened by the animals which circumstances are defined in sections 79 and 80;

(b) to make provision with respect to the killing or wounding of protected animals through error or accident;

(c) to provide for subsequent action to the wounding of a dangerous animal; and

(d) to prohibit molesting or illtreating wild animals.

Killing a
protected
animal in
self-defence

74. Any person may kill or attempt to kill any protected animal in defence of himself or of another person or any property, crop or domestic animal if immediately and absolutely necessary:

Provided that nothing in this section shall absolve from liability of an offence under this Act, any person who at the time of attempted killing was committing any offence under this Act:

Killing a
game animal
in defence
of property

75. Any person may attempt to kill or kill any game animal which is causing material damage to any land, crop, domestic animal, building, equipment or other property of which the person is either the owner or the servant of the owner acting on his behalf in safeguarding the property.

Ownership of
carcass not
transferrable

76.—(1) Except as otherwise provided by this Act, or by the conditions of any licence issued under Part VI, the killing of any protected animal under section 74 or 75 shall not be deemed to transfer ownership of the carcass thereof to any person.

(2) Any person who kills a protected animal under section 74 or section 75 shall, as soon as practicable, report the facts to any officer and shall, unless otherwise entitled to retain the same under the conditions of any licence issued under Part VII, hand over the carcass or such parts thereof as the officer may direct.

(3) Any person who contravenes this section shall be guilty of an offence.

Reports to
be made to
an officer
where
protected
animals
cause damage
to property

77.—(1) Subject to this Act, any person having reason to believe that any protected animal is causing or is about to cause material damage to any land, crop, domestic animal, building, equipment or other property may report the facts to an officer.

(2) An officer who receives a report pursuant to subsection (1) shall, as soon as practicable, assess the extent of the threat posed by the said animal and take any necessary action he considers fit in the circumstances.

(3) In deciding what action should be taken to minimize damage to property caused by a protected animal, an officer shall carefully consider the status of the species and if he decides to kill or attempts to kill the animal, he shall do so only as a last resort and if only he has reasonable ground for believing that this course of action will not endanger survival of the species.

78.—(1) If any person kills any protected animal through accident or error he shall, as soon thereafter as may be practicable, report the facts to an officer and shall hand over the carcass or such parts thereof as the officer may direct.

Reports to be made where protected animal is killed through error or by accident

(2) Nothing in subsection (1) shall apply to any person if such person is entitled under any licence issued under Part VII to hunt a protected or game animal of that species and sort, in the circumstances under which he killed such animal and no offence under this Act shall have been committed in relation to the killing of such animal.

(3) Any person who contravenes this section shall be guilty of an offence.

79.—(1) Any person who in any circumstances wounds any protected animal and fails without reasonable cause to use all reasonable endeavour to kill such animal at the earliest opportunity, shall be guilty of an offence.

Wounded protected animals

(2) Subsection (1) shall not be construed as authorizing any person to follow any wounded animal—

(a) into a national park or wildlife reserve, unless the person holds a licence authorizing him to hunt the animal in the national park or wildlife reserve; or

(b) onto private land upon which the person has no permission to enter.

(3) Any person who believes that he has wounded any protected animal which in such wounded condition has entered a national park or wildlife reserve shall immediately report the facts to an officer who shall as he sees fit, decide whether or not the animal should be killed and shall issue instructions accordingly.

(4) Any person who believes that he has wounded any protected or game animal which in such wounded condition has entered private land upon which he has no permission to enter shall, immediately report the facts to the owner of the land.

(5) An owner of land who receives a report pursuant to subsection (1) shall decide whether or not the person making the report is to be permitted to enter his land for the purpose of hunting the animal, and the landowner's decision in this regard shall be final.

(6) Any person who contravenes this section shall be guilty of an offence.

80.—(1) Any person who, in any circumstances whatsoever, wounds any dangerous animal and fails to kill or capture it within 24 hours after its wounding, shall, immediately report the facts to an officer.

Wounded dangerous animals

(2) Any officer who receives a report pursuant to subsection (1) shall take immediate steps to locate the wounded animal, assess its condition and decide, as he sees fit, whether or not to kill it and shall either carry out the act himself or give instructions accordingly:

Provided that if the animal enters a national park or wildlife reserve provisions of subsections (2) or (3) of section 79, as the case may be, shall apply.

(3) The provisions of section 79 (1) in respect to private land shall not apply to a person entering such land in pursuit of a dangerous animal wounded by him:

Provided that he reports the facts to the owner of the land as soon as practicable.

(4) Any person who contravenes this section shall be guilty of an offence.

Dangerous
animal
posing threat
to human
life or
property

81.—(1) If any dangerous animal is believed to be threatening or about to threaten human life or property, any person may request any officer for assistance in minimizing or preventing the threat.

(2) Where an officer receives a request pursuant to subsection (1) he shall, as soon as practicable, take steps to minimize or prevent the threat, and such steps may include the killing of the animal:

Provided that if the animal is a protected animal the killing shall only be undertaken subject to section 74 or 75.

Molesting or
provoking
animals
prohibited

82. Any person who willfully and without just excuse or cause—

(a) molests or provokes any protected or game animal in a manner which results or is likely to result in its destruction; or

(b) molests or provokes any wild animal in a manner which results or is likely to result in the provocation, harassment or destruction of any protected or game animal,

shall be guilty of an offence.

Protection of
wild animals

83. A person who causes unnecessary or undue suffering to any wild animal, whether the animal lives in the wild or is being kept in captivity, shall be guilty of an offence.

Use of
repellant
substances or
devices

84. Nothing in this Part shall be construed as prohibiting the use of repellant substances or devices which are not capable of killing or injuring any protected or game animal by a property owner or his servant for the purpose of repelling any wild animal from his property.

PART X—COMMERCE RELATED TO WILDLIFE

Purpose of
this Part

85. The purpose of this Part is to regulate commerce in wildlife and its specimens with the goal of better safeguarding the resource.

36.—(1) Except as otherwise provided by subsection (2), any person who possesses, buys or sells, or who attempts to possess, buy or sell any specimen of a protected species shall be guilty of an offence.

Prohibition of possession, sale and buying, of protected species

(2) The provisions of subsection (1) shall not apply to possession of any specimen lawfully acquired under a licence issued under Part VII, by a person who is in possession of a valid certificate of ownership issued pursuant to section 38 (3).

37.—(1) The Minister may from time to time, on the recommendation of the Board make regulations providing for—

Regulations for controlling trade or dealings in protected animals

(a) the control of trade in live animals of such species as the Minister shall prescribe in the regulations and the control of trade in the carcasses, meat and skins of such animals;

(b) the control of industry engaged in the manufacturing of articles derived from protected animals;

(c) the control of the taxidermy industry;

(d) the issue of permits to persons engaged in the foregoing occupations, and for prescribing fees payable for such permits.

(2) Any person who contravenes any regulation made under this section shall be guilty of an offence.

38.—(1) Any person who, under a licence issued under Part VII, takes possession of a specimen of a protected species, other than specimen for human consumption shall, within fourteen days, present the specimen together with his licence to the Chief Parks and Wildlife Officer and if he wishes to retain the specimen he may apply in writing or in the prescribed form, if any, to the Chief Parks and Wildlife Officer for a certificate of ownership in respect thereof.

Certificate of ownership

(2) Any person who contravenes subsection (1) shall be guilty of an offence.

(3) Where the Chief Parks and Wildlife Officer is satisfied that an applicant under subsection (1) is in lawful possession of any specimen, he may issue a certificate of ownership which shall be in the prescribed form.

(4) Where the Chief Parks and Wildlife Officer is satisfied that a certificate of ownership issued under subsection (3) has been issued through fraud, misrepresentation or error, he may revoke the certificate and the person to whom the certificate was issued shall forthwith upon demand by the Chief Parks and Wildlife Officer surrender the certificate to him for cancellation and a person who, without valid reason, fails so to surrender the certificate shall be guilty of an offence.

(5) Any person aggrieved by the cancellation of a certificate of ownership pursuant to subsection (4) may, within thirty days of its cancellation, appeal in writing to the Minister.

(6) In determining an appeal under subsection (5), the Minister may hear the views of the Chief Parks and Wildlife Officer; and may uphold the decision of the Chief Parks and Wildlife Officer or instruct him to reissue the certificate of ownership.

(7) The decision of the Minister on the determination of an appeal shall be final.

Transfer of
ownership of
specimen

89.—(1) Any person who transfers or purports to transfer ownership of any specimen of a prescribed species, whether by gift, sale or otherwise shall at the time of the transfer, or the purported transfer be in possession of a certificate of ownership in respect of the specimen.

(2) Upon the transfer of any specimen, the transferor shall surrender the certificate to the Chief Parks and Wildlife Officer who shall thereupon issue a new certificate to the new owner but the Chief Parks and Wildlife Officer shall retain the certificate surrendered to him.

(3) Any person who receives by transfer the ownership of any specimen of a prescribed species shall, at the time of the transfer, obtain from the transfer or in respect of the specimen a certificate of ownership endorsed pursuant to subsection (2).

(4) Any person who contravenes this section shall be guilty of an offence.

(5) Nothing in this section shall apply to any transfer of ownership occasioned by operation of law.

Government
trophy

90.—(1) Any specimen of any protected species the absolute ownership of which has not passed to any person under the provisions of this Act, shall be a government trophy for the purposes of this Act.

(2) Any person who obtains any government trophy by any means shall, as soon thereafter as may be practicable, report the facts to an officer and, if required, shall deliver up the trophy to the officer.

(3) Any person who contravenes subsection (2) shall be guilty of an offence.

(4) Any specimens so received or collected by an officer pursuant to subsection (2) shall be delivered by him to the Chief Parks and Wildlife Officer and all specimens received by the Chief Parks and Wildlife Officer shall be subject to the provisions of Part XIII.

Dealings in
government
trophy

91.—(1) Any person who unlawfully possesses or who purports to buy, sell, or otherwise transfer or deal in any government trophy shall be guilty of an offence.

(2) Except as otherwise provided by section 90, possession by any person of a specimen of a protected species without a certificate of ownership shall, for the purposes of this section, be *prima facie* evidence of the specimen being a government trophy and of unlawful possession thereof by such person.

92.—(1) For the purposes of this Act, there shall be a professional hunter's licence which shall authorize the licensee to conduct business as a professional hunter and to solicit clientele.

Professional
hunter's
licence

(2) Upon application in the prescribed form, the Chief Parks and Wildlife Officer may, on the recommendations of the Board and with prior approval of the Minister, issue a professional hunter's licence subject to such conditions as may be prescribed and upon payment of the prescribed fee.

(3) A professional hunter's licence shall not absolve the licensee from compliance with any other written law that may relate to his business.

(4) A professional hunter's licence shall, unless sooner revoked or cancelled, be valid for the period endorsed on the licence which period shall in no case be longer than twelve months.

93. A person who is not a licensee under a valid professional hunter's licence who—

Certain
prohibited
acts by non-
professional
hunters

(a) conducts business as a professional hunter;

(b) advertises himself as a professional hunter;

(c) solicits any contract or commission under which or for which he is to act in the capacity of a professional hunter; or

(d) for gain or reward, assists any other person to hunt any protected or game animal except as a guide, tracker, porter or in some other like capacity,

shall be guilty of an offence.

94.—(1) The Chief Parks and Wildlife Officer may, on the recommendation of the Board and with the approval of the Minister, cancel professional hunter's licence if the licensee—

Suspension
or cancella-
tion of a
professional
hunter's
licence

(a) is convicted of an offence under this Act;

(b) fails to comply with any condition of the licence; or

(c) is not, in the opinion of the Chief Parks and Wildlife Officer conducting the business of a professional hunter in a fit and proper manner and the Chief Parks and Wildlife Officer shall forthwith suspend such professional hunter's licence pending consideration of its cancellation under this subsection.

(2) The Chief Parks and Wildlife Officer shall notify the licensee in writing of any decision to suspend or cancel as the case may be, the professional hunter's licence and shall state the reasons for the decision.

(3) A licensee whose licence is cancelled under this section may appeal to the Minister in writing within thirty days after the date of the notice of cancellation given under subsection (2).

(4) In determining any appeal under subsection (4), the Minister may hear the views of the Board and the Chief Parks and Wildlife Officer and may uphold the cancellation or may instruct the Board and the Chief Parks and Wildlife Officer to reinstate the validity of the licence.

(5) The decision of the Minister on the determination of the appeal shall be final.

Restrictions
on the
professional
hunter's
licence

95. A professional hunter's licence shall not authorize the licensee to hunt any protected or game animal except as may be necessary in defence of human life or property as provided by sections 74 and 75, or to prevent the escape of an animal wounded by his client, that client being himself a licensee under a licence valid for that animal.

PART XI—IMPORT, EXPORT AND RE-EXPORT OF WILDLIFE SPECIMENS OF PROTECTED SPECIES AND LISTED SPECIES

Purpose of
this Part

96. The purpose of this Part is to control the import and export of wildlife specimens in order to—

- (a) assist in managing the wildlife resources of Malaŵi; and
- (b) assist conservation efforts that may be subject to international, regional or bilateral agreement to which Malaŵi or the Government is a party.

Import,
export or
re-export
permits

97. The Chief Parks and Wildlife Officer may issue to any person a permit in the prescribed form, to import or to export or to re-export any specimen of a protected species or listed species:

Provided that, in the case of a protected species, the Chief Parks and Wildlife Officer shall first require the person to produce a valid certificate of ownership in respect thereof and in the case of a listed species to produce evidence of compliance with the requirements of regulations made pursuant to section 99, or the requirements of this Act or of any other regulations made under this Act.

Importation,
exportation
and re-
exportation
to meet
customs laws

98. Any person who imports, exports or re-exports or attempts to import or export or re-export any specimen of a protected species or a listed species—

- (a) except through a customs post or port; or

(b) without producing to a customs officer a valid permit to import, to export or to re-export the specimen,
shall be guilty of an offence.

Additional
restrictions
on imports,
exports or
re-export
of specimens

99.—(1) The Minister may, after consulting the Minister responsible for Trade and Industry, make regulations imposing additional restrictions on imports, exports or re-exports of specimens of a protected species or listed species and for the purposes of such regulations the Minister may incorporate the requirements under any international, regional or bilateral agreement to which Malaŵi or the Government is a party.

(2) Any person who contravenes regulations made under subsection (1) shall be guilty of an offence.

PART XII—NATIONAL PARKS AND WILDLIFE FUND

100.—(1) There is hereby established a fund to be known as the National Parks and Wildlife Fund (in this Act referred to as the "Fund").

Establishment
of the Fund

(2) The Fund shall consist of—

(a) such sums as shall be appropriated by Parliament for the purposes of the Fund;

(b) advances made to the Fund under section 102;

(c) such sums as may be received for the purposes of the Fund by way of voluntary contributions;

(d) payments made into the Fund under section 119; and

(e) such sums or other assets as may be donated for the purposes of the Fund by any foreign government, international agency or foreign institution or body.

101. The Fund shall be vested in the Minister and, subject to this Act, shall be administered in accordance with his directions subject to the provisions of the Finance and Audit Act.

The Fund to
vest in the
Minister
Cap. 37:01

102. If in any financial year the income of the Fund together with any surplus income brought forward from a previous year, is insufficient to meet the actual or estimated liabilities of the Fund, the Minister responsible for finance may make the advances to the Fund in order to meet the deficiency or any part thereof and such advances shall be made on such terms and conditions, whether as to repayment or otherwise, as the Minister responsible for finance may determine.

Advances to
the Fund

103. The objects for which the Fund is established shall be the development, promotion, management and administration of national parks and wildlife reserves in Malawi.

Objects of
the Fund

104. Without derogation from the generality of section 103, the Fund, may be applied to—

Application
of the Fund

(a) research and training which is calculated to promote proper management of national parks and wildlife reserves;

(b) the acquisition of land, equipment, materials and other assets and the construction of buildings in order to promote the objects of the Fund;

(c) the cost of any scheme which the Minister considers to be in the interest of the management of national parks and wildlife;

(d) meeting any expenses arising from the establishment and maintenance of the Fund; and

(e) any purpose which the Minister considers to be in the interest of the objects of the Fund.

105.—(1) The Minister shall cause to be kept proper books and other records of account in respect of receipts and expenditures of the Fund in accordance with the provision of the Finance and Audit Act.

Books and
other records
of account,
audit and
reports of the
Fund
Cap. 37:01

(2) The accounts of the Fund shall be audited by the Auditor General, who shall have all the powers conferred upon him by the Finance and Audit Act.

Cap. 37:01

(3) The Minister shall cause to be prepared, as soon as practicable, but not later than six months after the end of the financial year, an annual report on all the financial transactions of the Fund.

(4) The report under subsection (3) shall include a balance sheet, an income and expenditure account and the annual report of the Auditor General and shall be laid by the Minister before the National Assembly.

Holdings of
the Fund

106.—(1) All sums received for the purposes of the Fund shall be paid into a banking account and no amount shall be withdrawn therefrom except by means of cheques signed by such persons as are authorized in that behalf by the Minister.

(2) Any part of the Fund not immediately required for the purposes of the Fund may, on the recommendation of the Board, be invested in such manner as the Minister, after consulting with the Minister responsible for finance, may determine.

Financial
year

107. The Financial year of the Fund shall be the period of twelve months ending on the 31st March in each year:

Provided that the first financial year of the Fund may be a period shorter or longer than twelve months as the Minister shall determine, but in any case not longer than eighteen months.

PART XIII—PENALTIES AND FORFEITURES

General
penalty

108. Subject to the provisions of this Act, a person who is convicted of an offence under this Act for which no other penalty is provided shall—

(a) in the case of a first offence, be liable to a fine of not less than K200 but not more than K500 and to imprisonment for a term of three months;

(b) in the case of a second or subsequent offence, to a fine of not less than K500 but not more than K1,000, and to imprisonment for a term of six months.

Offences
relating to
game species

109. Any person who is convicted of an offence involving—

(a) taking, hunting, molesting or reducing into possession any game species; or

(b) possession of, selling, buying, transferring, or receiving in transfer any specimen of game species,
shall—

(i) in the case of an offence committed in a protected area, be liable to a fine of not less than K800 but not more than K2,000 and to imprisonment for a term of one year;

(ii) in the case of an offence committed in an area other than a protected area, be liable to a fine of not less than

K50 but not more than K2,000 and to imprisonment for a term of one year.

110. Any person who is convicted of an offence involving—
(a) taking, hunting, molesting, or reducing into possession any protected species other than game species; or

Offences relating to protected species other than game species

(b) possession of, selling, buying, transferring or accepting in transfer any specimen of protected species other than game species;

(c) contravention of provision of this Act which provides for the conduct of a licensee under a professional hunter's licence; or

(d) contravention of sections 32, 33, and 35 of this Act,

shall be liable to a fine of K10,000 and to imprisonment for a term of 5 years, and in any case the fine shall not be less than the value of the specimen involved in the commission of the offence.

111. Any person who is convicted of an offence under section 98 or under regulations made pursuant to section 99 shall be liable to a fine of K10,000 and to imprisonment for a term of 5 years, and in any case the fine shall not be less than the value of the specimen involved in the commission of the offence.

Offences relating to import, export or re-export of specimen of protected species or listed species

112. If any person is convicted of an offence under this Act in respect of any excavation, fence, enclosure or any other device fixed in or on the ground or upon vegetation, which the person has made, used or had in his possession for the purpose of hunting in contravention of this Act, the court shall, in addition to any other penalty imposed, order the device to be destroyed or obliterated in such manner as the court may specify, and any expenditure incurred, if any, shall be recoverable from the person as a civil debt owed to the Government

Offences relating to devices

113.—(1) Upon the conviction of any person of an offence under this Act where it considers forfeiture to be necessary, the court shall, notwithstanding any other written law and subject to the provisions of section 108 and in addition to any other penalty imposed, declare any specimen, domestic animal or any firearm or other weapon, trap, net, poison, material or any motor vehicle, aircraft, boat, or any other article taken by or used in connexion with the commission of the offence to be forfeited to the Government.

Forfeiture as an additional penalty

(2) Upon the conviction of any person of an offence referred to in section 99, the court may, in addition to any other penalty imposed, declare any specimen, domestic animal or article as specified under subsection (1) to be forfeited to the Government.

(3) The disposal of any specimen, domestic animal or article forfeited to the Government under this section shall be subject to the provisions of Part XIV.

Conditional
order of
forfeiture

114.—(1) When a court is required under subsections 115 (1) and (2) to make a declaration of forfeiture in respect of any article the ownership of which requires registration under any written law, the court shall make a conditional order of forfeiture in the prescribed form.

(2) Upon the making of a conditional order of forfeiture pursuant to subsection (1), the Chief Parks and Wildlife Officer shall, within thirty days thereafter, cause to be published in the *Gazette* and in two consecutive issues of a local newspaper in general circulation, a notice of the order.

(3) If ownership of the article is registered in the name of any person other than the convicted party, the Chief Parks and Wildlife Officer shall, within seven days after publication of the notice in the *Gazette* cause a copy thereof to be sent to the person concerned.

(4) Any person who wishes to claim right of ownership in the article may, within sixty days of the last publication of the conditional order, lodge with the court a written application for discharging of the order, setting out his claim of ownership in the article.

(5) Upon an application made under subsection (4), the court shall set a date for a hearing of the application and serve notice of the hearing on the applicant and on the Government.

(6) In any hearing of any application made under subsection (4), the burden of proof shall be upon the applicant, and the conditional order shall not be discharged unless the applicant proves, that he was not privy to the offence and that the article was, at the time that the offence was committed, being used for that purpose without his knowledge or consent.

(7) If an application made under subsection (4) fails to win discharge of a conditional order, the court shall declare the article finally forfeited to the Government.

(8) Where upon any application made under subsection (4), a court is satisfied that an article is owned jointly by, or is the subject of a rental agreement between, the applicant and the convicted person, and the applicant has discharged the burden of proof in accordance with subsection (6), the court shall declare forfeited all of the estate, interest or rights of the convicted person therein, and shall order them to be disposed of as it deems fit.

(9) Any right of any claimant under any rental agreement to repossess any article which is subject to a conditional order of forfeiture made under subsection (1) shall be suspended pending determination of any application made under subsection (4).

115.—(1) If any article the ownership of which requires registration under any written law is seized as a result of an offence under this Act and the person responsible is unknown and cannot be found for the purpose of charging him with the offence or having been charged, fails to appear to answer the charge, the Chief Parks and Wildlife Officer may apply to the court for a declaration of forfeiture.

Seized goods may be subject of forfeiture order

(2) Upon receipt of an application from the Chief Parks and Wildlife Officer under subsection (1), the court shall make a conditional order of forfeiture in the prescribed form and the provisions of subsections (2) to (9) of section 114 shall apply.

116. If any licensee under any licence or the holder of any permit or certificate issued under this Act is convicted of an offence under this Act which involves the licence, permit or certificate, the court shall, in addition to any other penalty imposed, order the person to surrender it forthwith to the Chief Parks and Wildlife Officer to be dealt with by him in accordance with the provisions of this Act.

Surrender of licence, permit and certificate in event of conviction

PART XIV—DISPOSAL OF GOVERNMENT TROPHIES, FORFEITED SPECIMENS, DOMESTIC ANIMALS AND OTHER ARTICLES

117. Whenever the Chief Parks and Wildlife Officer takes possession of any government trophy or any confiscated specimen, domestic animal, or article, he shall cause receipt thereof to be recorded in the prescribed register and shall safeguard it until such time as it may be disposed of in accordance with the provisions of section 118 and shall be recorded by the Chief Parks and Wildlife Officer in the prescribed register.

Disposal of specimens by the Chief Parks and Wildlife Officer

118.—(1) Where the Chief Parks and Wildlife Officer takes possession of a dead specimen of a protected species he shall at his discretion either—

Disposal of dead or live specimens, of protected species or listed species

- (a) destroy the specimen;
- (b) donate the specimen, without requiring payment, to a recognized scientific or educational institution;
- (c) sell it in whole or in parts; or
- (d) retain the specimen in his official custody either permanently or pending disposal in accordance with paragraphs (a) or (b) or (c) of this subsection.

(2) Where the Chief Parks and Wildlife Officer takes possession of a live specimen of any protected species or of any listed species and such specimen is, in his opinion, capable of normal survival in its natural habitat, he shall cause the said specimen to be returned to the said habitat:

Provided that if the specimen, in the opinion of Chief Parks and Wildlife Officer, requires to be withheld temporarily from the wild for the purpose of better ensuring its eventual survival, the Chief Parks and Wildlife Officer may direct that the specimen be so withheld.

(3) Where the Chief Parks and Wildlife Officer, takes possession of any live specimen of any protected species other than game species or listed species and such specimen is, in his opinion, permanently incapable of normal survival in its natural habitat he may—

(a) donate the specimen, without requiring payment, to a recognized zoological, botanical, scientific or educational institution; or

(b) retain the specimen in his official custody either permanently or pending disposal in accordance with paragraph (a).

(4) Where the Chief Parks and Wildlife Officer takes possession of—

(a) any live game animal which is, in his opinion, incapable of normal survival in its natural habitat;

(b) the meat of any game animal; or

(c) any live domestic animal,

he shall dispose of the animal or meat as he considers fit:

Provided that if disposal is by sale, any sums received shall be payable in accordance with the provisions of Part XII.

Money from
sale of
specimen
to be paid
into the Fund

119. Whenever the disposal of specimens or articles under this section is by sale, all monies realized shall be payable only to a Fund established under this Act.

Specimens
or articles
to be held
by Chief
Parks and
Wildlife
Officer

120. Any specimen, domestic animal or article held in the custody of the Chief Parks and Wildlife Officer under this Act shall be held by him solely in his official capacity, and nothing in this Act shall be construed as giving the person holding the office of Chief Parks and Wildlife Officer any private right of ownership over any specimen, domestic animal or article.

PART XV—MISCELLANEOUS

General
indemnity

121.—(1) No action shall lie against the Government for the recovery of any damage caused to any person or property by any animal in a national park or wildlife reserve.

(2) The Chief Parks and Wildlife Officer or any other officer shall not be held liable in damages or otherwise to any person by reason of his exercise or non-exercise in good faith of the powers vested in him under this Act.

Implementa-
tion of
agreements

122. The Minister may, by an order published in the *Gazette*, specify the measures for the proper implementation of relevant provisions of any convention on national park or wildlife management to which Malawi or the Government is a party.

123. The Minister may make regulations for carrying this Act into effect and, without prejudice to the generality of the foregoing power, such regulations may—

- (a) provide for returns to be furnished to the Minister or the Chief Parks and Wildlife Officer by holders of licences, permits, certificates or records issued or maintained under this Act;
- (b) prescribe forms to be used under this Act;
- (c) prescribe fees payable under this Act;
- (d) provide for the remission in special cases of any fees payable under this Act;
- (e) provide for the hearing and determination of appeals to the Minister;
- (f) provide for the furtherance of public knowledge concerning the management of wildlife by such means as may be considered appropriate; and
- (g) prescribe anything required to be prescribed under this Act.

PART XVI—REPEAL AND SAVINGS

124.—(1) The following Acts are hereby repealed—

- | | |
|--------------------------------|----------------------------------|
| (a) the Game Act; | Repeal and savings
Cap. 66:03 |
| (b) Wild Birds Protection Act; | Cap. 66:04 |
| (c) Crocodiles Act; and | Cap. 66:06 |
| (d) National Parks Act. | Cap. 66:07 |

(2) Any subsidiary legislation made under the Acts repealed by subsection (1) in force immediately before the commencement of this Act—

- (a) shall, unless in conflict with this Act continue in force and be deemed to be subsidiary legislation made under this Act;
- (b) may be replaced, amended or repealed by subsidiary legislation made under this Act.

(3) Any subsidiary agreement or similar arrangement made pursuant to the provisions of the Acts repealed by subsection (1) shall continue in force until terminated in accordance with the terms and conditions thereof.

Passed in Parliament this fifteenth day of April, one thousand, nine hundred and ninety-two.

R. L. GONDWE
Clerk of Parliament